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Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 711

Case No. 765: TECKLE-MARIAM

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Hubert Thierry;

Whereas, on 21 December 1992 and 21 February, 5 May and 23 July 1993, Desta Tekle-Mariam Walelign, a former staff member of the United Nations Economic Commission for Africa (hereinafter referred to as ECA), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 11 October 1993, the Applicant, after making the necessary corrections, again filed an application, the pleas of which read as follows:

"*PLEAS*:

The appeal by the appellant is based on ARTICLE 7, Annex I, against the Administrative decision of the Secretary-General contained in letter dated November 23, 1992, given in support of ECA rejection of appellant's declared 'Date of Birth Certificate Correction' and the inconsistent report of the *Panel of the Joint*

Appeals Board No. 964, containing no recommendation but rather supporting Respondent's Statement of 23 July 1992 say the Secretary-General of the United Nations - addressed to the Board ..."

Whereas the Respondent filed his answer on 7 December 1993;

Whereas the Applicant filed written observations on 6 January 1994;

Whereas the Applicant submitted additional documents on 26 March 1994;

Whereas the facts in the case are as follows:

The Applicant entered the service of ECA on 1 July 1964, on a short-term appointment for six months as a Messenger at the GS-2 level. On 1 October 1965, after a series of short-term appointments, the Applicant was granted a one-year fixed-term appointment, which was extended for six months. On 1 April 1967, the Applicant was granted a probationary appointment, which was converted to a regular appointment on 1 July 1968. With effect from 1 May 1970, the Applicant was promoted to the GS-3 level as a Clerk/Messenger. He served as a Documents Clerk with effect from 1 January 1973, and was promoted to the GS-4 level with effect from 1 August 1974. The Applicant resigned on 31 August 1990.

In a Personnel Action Form issued on 9 July 1964, to implement the Applicant's first appointment, his date of birth was registered as 3 October 1941. All subsequent Personnel Action Forms issued through 15 April 1975 indicate this date as the Applicant's date of birth. Other official United Nations forms indicate the Applicant's date of birth as 14 October 1941, 3 November 1941 and 11 November 1941.

On 16 April 1987, the City Council of Addis Ababa issued a birth certificate on which the Applicant's date of birth is given as 4 December 1927. According to the record, this birth certificate was obtained by the Applicant in response to requests from the ECA Administration for verification of his date of birth. On 21 April 1987, the Applicant

submitted this birth certificate to the Personnel Section of ECA. Subsequently, the Administration informed the Applicant that his request to have the United Nations records of his date of birth changed could not be granted.

On 25 June 1987, and again on 10 August 1987, the Applicant requested the United Nations Joint Staff Pension Fund (UNJSPF) to change the date of his birth. In a reply dated 15 October 1987, the UNJSPF Secretary informed the Applicant that "since the ECA had refused to accept the new date of birth the Fund is in no position to do otherwise".

On 21 February 1988, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 18 April 1988, he requested the Secretary-General, *inter alia*, to review the correspondence he had had with ECA and UNJSPF and to allow him "to be retired on pension". In a reply dated 10 May 1988, the Assistant Secretary-General, Office of Human Resources Management (OHRM), informed the Applicant that, in accordance with administrative policy, "requests for change of date of birth cannot be accepted unless the request was submitted within two years after the date of appointment", and that for purposes of United Nations entitlements, "your date of birth will be considered as 3 October 1941".

In a letter dated 6 February 1990, the Applicant again requested the Assistant Secretary-General, OHRM, to change his date of birth to correspond to his birth certificate. In a reply dated 7 September 1990, the Director of the Staff Administration and Training Division, OHRM, recalled the Applicant's prior request for administrative review of the same decision, and noted that the Applicant had not submitted an appeal to the JAB within the time-limits of staff rule 111.2 (a) (i). He noted that the JAB could waive these limits in exceptional circumstances and suggested that, if he wished to pursue the appeal, the Applicant should address himself to the JAB "indicating the exceptional circumstances which prevented you from taking timely action in 1988".

In the meantime, on 1 June 1990, the Applicant submitted his resignation, which was accepted with effect from 31 August 1990. Following a further exchange of correspondence, in which it was again suggested to the Applicant that he should appeal to the JAB, on 26 August 1991, the Applicant lodged an appeal with the JAB.

On 19 November 1992, the JAB adopted its report, having concluded that "under the terms of staff rule 111.2 (a) and (c), the appeal was not receivable". In a letter dated 23 November 1992, the Director of Personnel transmitted the JAB report to the Applicant and informed him that the Secretary-General had decided "to maintain the contested decision and to take no further action on your case".

On 11 October 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was not aware of his exact age and, when asked for his birth date when first employed, gave a rough estimate. Only when requested by the ECA Administration to produce a birth certificate did the Applicant obtain one, issued on the basis of the testimony of three witnesses.

2. The Administration should recognize the Applicant's birth certificate so that he may receive the corresponding pension benefits, and compensation for the time he served beyond retirement age.

Whereas the Respondent's principal contention is that the appeal is time-barred.

The Tribunal, having deliberated from 30 June to 28 July 1995, now pronounces the following judgement:

I. The Applicant entered the service of the United Nations Economic Commission for Africa in Addis Ababa in July 1964 as a Messenger. He was granted a regular appointment in 1968 and became a Documents Clerk in 1973. In 1974, he was promoted to the GS-4 level.

At the time of his appointment, he had not included in his file the birth certificate normally required, maintaining that it was not yet customary in his day for the Ethiopian Government to issue such documents. In his personnel file, the Applicant had nevertheless indicated that he was born on 3 October 1941. Asked later to furnish a certificate of birth, the Applicant travelled to his native village, where he obtained court-certified statements from three sworn witnesses that his date of birth was 4 December 1927. On that basis, on 16 April 1987, he secured from the City Council of Addis Ababa a certificate indicating that his date of birth was 4 December 1927. On 21 April 1987, the Applicant submitted a certificate that the Administration refused to take into consideration, on the basis of information circular ST/ECA/IC/84/2 of 17 January 1984, which stipulates:

> "... that Personnel Officers should not agree to requests for change of date of birth unless the request was submitted within two years after the date of appointment and within six months after discovery of the error ..."

II. The Applicant challenged this decision to deny his request by applying to the Joint Appeals Board (JAB), which declared that his appeal was time-barred under the terms of staff rule 111.2 (a) and (c), according to which a staff member must appeal against an administrative decision within two months from the date the staff member received notification of the decision in writing.

The Administration endorsed the JAB's view. At that point, the Applicant, who had in the meantime resigned with effect from 31 August 1990, submitted an application to the Tribunal.

III. In his application, the Applicant maintains, first, that the Administration should have recognized the birth certificate he had produced. He adds that, in view of his age, he should receive all entitlements to pension benefits and to payments of other allowances or of compensation for injury sustained. Lastly, he asks for payment of remuneration in compensation for two years and nine months of additional service beyond the compulsory retirement age of 60.

The Respondent requests dismissal of this appeal and concludes that the Applicant should not be granted any compensation. The Respondent contends in that connection that the Applicant had not made an appeal against the decision to refuse to modify his date of birth within the two-month time-limit set out in staff rule 111.2 (a). Consequently, the Applicant must be considered time-barred and can take no further action.

IV. It appears from the file first, that in his letter dated 18 April 1988, the Applicant lodged an appeal with the Secretary-General against the contested decision, but that the appeal was rejected on 10 May 1988. The Applicant did not appeal this decision.

Almost two years later, on 6 February 1990, the Applicant renewed his request, addressing it to the Assistant Secretary-General, Office of Human Resources Management. In a reply dated 7 September 1990, the Director of the Staff Administration and Training Division, referring to the letter of 10 May 1988, confirmed its contents. On 14 June 1991, the Applicant again wrote to the Secretary-General. On 26 July 1991, the Office of Human Resources Management answered the Applicant, recalling once again that his appeal had already been rejected.

The Tribunal considers that this reply cannot be deemed to be a new administrative decision. It simply reiterates the previous rejection.

V. The Tribunal finds that the Applicant did not lodge the appeal against the decision taken on 10 May 1988 within the stipulated time-limit. It follows that his application must be declared not receivable.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Hubert THIERRY
Member

Geneva, 28 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary